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STATE AUDITOR'S

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HELENA, MONTANA

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State Auditor's Office
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Attorney for State Auditor

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
STATE OF MONTANA

IN THE MATTER OF: THE PROPOSED
DISCIPLINARY TREATMENT OF
CHICAGO TITLE INSURANCE CO.,
Respondent.

Case No. 2006-28

CONSENT AGREEMENT
AND FINAL ORDER

The State Auditor and Commissioner of Insurance of the state of Montana
(Commissioner), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. §
33-1-101, *et seq.*, hereby makes the following allegations which justify and support disciplinary
treatment:

FACT ASSERTIONS

1. Respondent Chicago Title Insurance Company (Chicago Title), NAIC #50229 is a
Montana licensed title insurer holding certificate of authority #569 issued by the Commissioner
and has been registered with the Montana Insurance Department (Department) since 1962 as a
title insurance company.

2. Chicago Title has offices in three Montana cities: Helena, Great Falls and Billings.

3. On December 5, 2005, Investigator Jerry Stier conducted an examination of the Great
Falls office of Chicago Title.

4. Stier noted that none of the eleven producer's licenses were publicly displayed at the
Great Falls office; the licenses were in work cubicles; most were covered with papers or post-it-
notes; and so not readily visible.

5. Stier also discovered at the Great Falls office that Amy K. Daniels had an insurance

1 producer's license that had lapsed on February 15, 2001. Shan M. Gould had a license that
2 lapsed on February 15, 2003 and Linda K. Smith's license lapsed March 1, 2005.

3 5. On December 21, 2005, Stier conducted an examination of the Billings offices of
4 Chicago Title. Stier met with Todd Sherman, Vice-President and Yellowstone County Manager.
5 Stier found that none of the producer licenses were publicly displayed.

6 6. On January 30, 2006, Investigator John Forsman called the Billings office and talked
7 with Trevor Styles to inquire about title insurance. Styles solicited and negotiated with Forsman.
8 Styles was not licensed as an insurance producer.

9 7. On January 31, 2006, Investigator Neil Brunett called the Billings office with a set
10 scenario concerning title insurance. Brunett talked with Nate Cook. Cook was not licensed as an
11 insurance producer yet he solicited and negotiated. Cook had earlier told Stier that he was the
12 bookkeeper and had little interaction with clients.

13 8. On January 12, 2006, Stier conducted an examination of the Helena office and
14 examined the V-H file. Stier discovered that an \$11,412.76 loan secured by a second mortgage
15 on the subject property that had not been paid off at the time the title insurance policy was issued.
16 The home loan closed on March 15, 2005, but the \$11,412.76 loan was not paid off until
17 September 23, 2005. The \$11,412.76 loan was an encumbrance upon the subject property but
18 Chicago Title failed to show this mortgage as an encumbrance against the property.

19 9. On December 21, 2005 Stier conducted an examination of the Billings office and
20 discovered that Debra Connor, a licensed producer had not been appointed by Chicago Title.

21 10. Subsequent to Stier's investigation, Daniels, Gould and Smith from Chicago Title's
22 Great Falls office have remedied their lapsed status by getting their licenses reinstated.

23 11. Subsequent to the investigation, Chicago Title has caused all producer's licenses to
24 be publically displayed in its Montana offices.

25 12. Subsequent to the investigation, on November 29, 2006, Debra Connor was
26 appointed by Chicago Title.

27 13. Subsequent to the investigation, Trevor Styles and Nate Cook have gotten licensed as
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1 insurance producers.

2 14. Chicago Title had previously come to the attention of the Department for accepting
3 title insurance business in Montana from persons acting as title insurance producers without
4 being properly licensed as such and without being properly appointed with Chicago Title
5 Insurance Co. and had entered into a consent agreement with the Department as a result of the
6 same in Case No. 2003-52.

7 CONCLUSIONS OF LAW

8 1. The State Auditor is the Commissioner of Insurance pursuant to Mont. Code Ann.
9 § 2-15-1903.

10 2. The Montana Insurance Department is under the control and supervision of the
11 Commissioner of Insurance pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

12 3. The Commissioner of Insurance shall administer the Department to protect
13 insurance consumers pursuant to Mont. Code Ann. § 33-1-311.

14 4. Pursuant to Mont. Code Ann. § 33-1-102, a person or entity may not transact the
15 business of insurance in Montana or a business relative to a subject resident, located, or to be
16 performed in Montana without complying with the applicable provisions of the Montana
17 Insurance Code.

18 5. Pursuant to Mont. Code Ann. § 33-17-201, an insurance producer license must be
19 obtained from the Commissioner prior to holding oneself out to be an insurance producer or
20 acting as an insurance producer for subjects of insurance located, residing, or to be performed in
21 Montana.

22 6. Pursuant to Mont. Code Ann. § 33-1-212, title insurance is insurance of owners of
23 property or others having interest therein or liens or encumbrances thereon against loss by
24 encumbrance, defective titles, invalidity, or adverse claim to title.

25 7. Pursuant to Mont. Code Ann. § 33-17-213(4), the examination of a title insurance
26 producer must include but is not limited to questions pertaining to the search and examinations of
27 title to real property, insurance principals relating to title insurance, and the fiduciary duties and
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1 procedures of escrows, settlements and closings of real estate transactions.

2 8. Title insurance is a line of authority or business that an insurance producer must
3 be properly licensed to transact. Mont. Code Ann. §§ 33-17-212 through 33-17-214, and 33-25-
4 101, *et seq.*

5 9. Pursuant to Mont. Code Ann. § 33-25-105(13), a title insurance producer is any
6 person who holds a valid title insurance producer's license and is authorized in writing by a title
7 insurer to solicit title insurance business, collect rates, determine insurability in accordance with
8 underwriting rules and standards of the insurer, or issues policies of the insurer.

9 10. Pursuant to Mont. Code Ann. § 33-17-1102(2), an insurance producer shall
10 conspicuously display the insurance producer's license.

11 11. Insurance producers may not represent or claim to be a representative of an insurer
12 unless properly appointed with that insurer. Mont. Code Ann. § 33-17-236(1).

13 12. Pursuant to Mont. Code Ann. § 33-17-236(2), all insurers shall file with the
14 Commissioner and Department a notice of appointment for insurance producers.

15 13. Pursuant to Mont. Code Ann. § 33-17-231(1), each insurer appointing an
16 insurance producer shall file an appointment with the Commissioner and Department specifying
17 the kinds of insurance to be transacted by the insurance producer for the insurer.

18 14. Pursuant to Mont. Code Ann. §33-25-214(3), except as allowed by rules adopted by
19 the commissioner, a title insurer or title insurance producer may not knowingly issue an owner's
20 title insurance policy or commitment to insure unless all outstanding enforceable recorded liens
21 or other interests against the property title to be insured are shown.

22 15. Pursuant to Mont. Code Ann. §33-25-301, the commissioner may refuse to license
23 an applicant or renew the license of a person as a title insurance producer or may suspend or
24 revoke a title insurance producer's license or may fine a title insurance producer if the
25 commissioner finds that the title insurance producer intentionally misrepresented the terms of a
26 title insurance policy to an applicant or policyholder or has misrepresented material facts to,
27 concealed material facts from, or made false statements to a party to an escrow, settlement or
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1 closing transaction.

2 16. Pursuant to Mont. Code Ann. § 33-2-119(2)(a), the commissioner shall, after a
3 hearing, suspend or revoke an insurer's certificate of authority if the commissioner finds that the
4 insurer is using methods or practices in the conduct of its business that render its further
5 transaction in Montana injurious or hazardous to its policyholders or to the public.

6 17. By accepting title insurance business from unlicensed, unappointed insurance
7 producers, Chicago Title violated Mont. Code Ann. §§ 33-1-102, 33-17-231(1) and 33-17-
8 236(2).

9 18. By failing to conspicuously display all insurance producer's licenses Chicago Title
10 violated Mont. Code Ann. § 33-17-1102(2).

11 19. By failing to disclose the \$11,412.76 second mortgage as an encumbrance in the V-H
12 file Chicago Title violated Mont. Code Ann. § 33-25-214(1)(3).

13 20. Pursuant to Mont. Code Ann. § 33-1-317, the Insurance Commissioner may
14 impose an administrative fine of up to \$25,000.00 per each violation of the Montana Insurance
15 Code or any administrative rule promulgated thereunder.

16 AGREEMENT

17 The Department and Respondent Chicago Title Insurance Company hereby stipulate
18 and agree to the following:

19 1. The Commissioner and Department have jurisdiction over the subject matter of
20 the above-entitled proceeding.

21 2. Respondent acknowledges that it was advised of the right to be represented by
22 legal counsel, has exercised that right, and that said legal representation was satisfactory.

23 3. Respondent acknowledges that its authorized representative signing this Consent
24 Agreement and Final Order has read and understands each term of this Consent Agreement and
25 Final Order. Respondent acknowledges that it enters into this Consent Agreement voluntarily,
26 and without reservation. Respondent stipulates and agrees that the allegations contained in the
27 Notice of Proposed Agency Action and Opportunity For Hearing (License Discipline and
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1 Administrated Fines) be conformed to the allegations contained in this instrument for purposes of
2 administrative economy. Respondent acknowledges that its authorized representative signing
3 this Consent Agreement is not under the influence of alcohol or drugs (prescription or otherwise)
4 and that he or she does not suffer from any emotional disturbance or mental disease or defect that
5 would render him or her not competent to sign this Consent Agreement. Respondent further
6 acknowledges that this Consent Agreement constitutes the entire agreement between the parties
7 and that no other promises or agreements, either express or implied, have been made by the
8 Department or by any member, officer, agent or representative of the Department to induce
9 Respondent to enter into this Consent Agreement.

10 4. The Department contends as set forth in the preceding Fact Assertions and
11 Conclusions of Law and Respondent admits the same. The Department and Respondent have
12 elected to resolve these matters as follows:

13 (a) Respondent has ceased accepting title insurance business from unlicensed,
14 unappointed title insurance producers and has taken such steps as are required to ensure that all
15 of its agents or employees engaged in the selling, soliciting or negotiating insurance or acting
16 as insurance producers in this state are properly licensed and appointed;

17 (b) Respondent will continue to ensure that all of its insurance producers'
18 licenses are conspicuously displayed.

19 (c) Respondent agrees to ensure that its insurance producers not knowingly issue
20 an owner's title insurance policy or commitment to insure unless all outstanding enforceable
21 recorded liens or other interests against the property title to be insured are shown.

22 (d) For violations of Mont. Code Ann. §§ 33-1-102, 33-17-231, 33-17-236,
23 33-17-1102, and 33-25-214, the Department may impose a maximum fine of \$25,000.00 per
24 each violation pursuant to Mont. Code Ann. § 33-1-317. For all violations set forth herein
25 above, Respondent will pay an administrative fine of \$15,000.00, with all but \$7,500.00
26 suspended, to the Department within 30 days following the signing of the Final Order in this
27 matter. Respondent agrees to pay the remaining \$7,500.00 of the administrative fine if within
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1 the 2 years following the signing of the Final Order Respondent fails to comply with the
2 Montana Insurance Code and/or the administrative rules promulgated thereunder. The failure
3 of Respondent to comply during this time period will be determined in a subsequent legal
4 (administrative, civil and/or criminal) proceeding by the Commissioner, Department, and/or
5 State of Montana which need not be concluded within 2 years following the signing of the
6 Final Order in this matter. The remaining \$7,500.00 of Respondent's administrative fine will
7 be due within 30 days following the determination of Respondent's failure to comply;

8 (e) The Department and Respondent agree that this Consent Agreement and
9 Final Order resolves the violations set out herein;

10 (f) Respondent specifically and affirmatively waives a contested case
11 hearing and all rights to appeal under the Montana Administrative Procedure Act, and elects to
12 resolve this matter on the terms and conditions set forth herein;

13 (g) Respondent agrees that compliance with this Consent Agreement and
14 Final Order shall be a final compromise and settlement of the matters set forth herein;

15 (h) Respondent fully and forever releases and discharges the Commissioner,
16 Department, and all Department employees from any and all actions, claims, causes of action,
17 demands, or expenses for damages or injuries, whether asserted or unasserted, known or
18 unknown, foreseen or unforeseen, arising out of the factual allegations or conclusions in this
19 Consent Agreement; and

20 (i) The Department and Respondent agree that this Consent Agreement shall
21 be incorporated and made a part of the attached Final Order issued by the Commissioner herein.

22 5. Respondent further understands that, upon the signing of the Final Order by the
23 Commissioner or his representative, this Consent Agreement and Final Order will be an order
24 of the Commissioner and failure to comply with the same may constitute separate violations of
25 the Montana Insurance Code, pursuant to Mont. Code Ann. § 33-2-119 and/or other applicable
26 statutes or rules, and may result in subsequent legal action by the Department.

27 6. Respondent understands that this Consent Agreement is not effective until such
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1 time as the following Final Order is signed.

2 7. Respondent understands that this Consent Agreement and Final Order are public
3 records under Montana law and as such may not sealed or otherwise withheld from the public.
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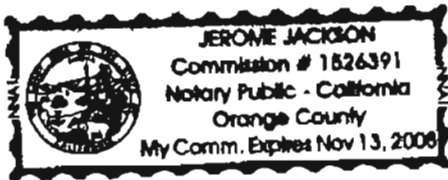
5 CHICAGO TITLE INSURANCE COMPANY, RESPONDENT

6 By: [Signature]
7 Its: SVP

2/5/07
Date

8 Subscribed and Sworn to before me this 5 day of Feb, 2007.
9

10 (SEAL)



[Signature]
(Signature)
JEROME JACKSON
(Printed name)

Notary Public for the State of CA
Residing at 2377 Daphne Pl Fullerton CA 92823
My commission expires Nov 13, 2008

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16
17 ACCEPTED ON BEHALF OF THE INSURANCE DEPARTMENT:

18 [Signature]
19 Michael Winsor, Staff Attorney

1/11/07
Date


1 **FINAL ORDER**

2 Pursuant to the authority vested by the Montana Insurance Code, Mont. Code Ann. § 33-
3 1-101, *et seq.*, and upon review of the forgoing Consent Agreement and good cause appearing
4 therefor,

5 IT IS ORDERED that the foregoing Consent Agreement between the Insurance
6 Department and Chicago Title Insurance Company is hereby adopted as if set forth fully herein.

7 DATED this 12th day of February, 2007.
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9 JOHN MORRISON
10 State Auditor and Commissioner of Insurance

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12 By: Carol Roy
13 Acting Deputy Insurance Commissioner
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CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of February, 2007, I served a true and accurate copy of the foregoing Consent Agreement and Final Order upon the Respondent and Department, by mail, postage prepaid, at the following address:

Joseph P. Mazurek
Crowley, Haughey, Hanson, Toole & Deitrich, PLLP
P.O. Box 797
Helena, MT 59624
(Legal Counsel for Respondent)

Michael Winsor
Staff Attorney
Insurance Department

Paula Sautter